

**Letter of Findings Number: 02-20150432  
Corporate Income Tax  
For The 2014 Tax Year**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Company was sustained on a carryforward of a net operating loss subject to review and sustained on its request of penalty waiver.

### ISSUES

#### **I. Adjusted Gross Income Tax - Net Operating Loss Carryforward.**

**Authority:** IC § 6-3-2-2.6; IC § 6-8.1-5-1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the assessment of corporate income tax.

#### **II. Tax Administration - Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the negligence penalty.

### STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. Prior to 2014, Taxpayer was part of a group of corporations filing a consolidated Indiana income tax return. Based on the consolidated return, the consolidated group had net operating losses available to be carried forward had the group filed a consolidated return for the 2014 tax year.

For the 2014 tax year, Taxpayer filed a separate Indiana corporate income tax return. When Taxpayer filed its return, Taxpayer claimed a net operating loss carryforward based on the prior net operating losses of the group. However, Taxpayer's claimed net operating losses were disallowed in their entirety. Thus, Taxpayer received an assessment of tax, interest, and a ten-percent negligence penalty. Taxpayer protested the assessments of tax and penalty.

The protest is decided on records available to the Department. This Letter of Findings results. Further facts will be provided as necessary.

#### **I. Adjusted Gross Income Tax - Net Operating Loss Carryforward.**

### DISCUSSION

The Department assessed tax on the ground that Taxpayer was not permitted to claim a net operating loss in its first year of filing for corporate adjusted gross income tax. Thus, the issue is whether Taxpayer's claimed net operating loss should have been disallowed.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of

State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Corporations are permitted to claim Indiana net operating losses pursuant to IC § 6-3-2-2.6. A previous year's net operating loss can be carried forward to later years in the same manner as federal net operating losses. IC § 6-3-2-2.6(f).

In this case, Taxpayer has not provided sufficient information to verify that the exact amount of the net operating loss claimed was correct. However, Taxpayer has provided sufficient information to conclude that its prior consolidated group had a valid net operating loss and that the application of that net operating loss to Taxpayer (or other corporations in the consolidated group) should be determined upon supplemental review by the Department's audit division.

### FINDING

Taxpayer's protest is sustained subject to review.

## II. Tax Administration - Negligence Penalty.

### DISCUSSION

The Department's audit imposed a ten percent negligence penalty for the tax period in question. Taxpayer requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;

- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Upon review, the Department agrees that, to the extent Taxpayer has a liability for the tax year in question, Taxpayer has provided sufficient legal and factual grounds to conclude that penalty waiver is appropriate. Taxpayer made sufficient efforts to determine its proper liability prior to both the original due date and the extended due date of the return; in fact, the tax resulted from a change in filing status requested by the Department. Thus, Taxpayer acted with reasonable cause for not remitting its tax on or before the original due date of the return.

### **FINDING**

Taxpayer's protest of the imposition of negligence penalty is sustained.

### **SUMMARY**

On Issue I, Taxpayer's protest is sustained subject to audit review of the proper amount of net operating loss to be claimed. As to Issue II, Taxpayer's protest of the imposition of negligence penalty is sustained.

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